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No. 82-1771

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

UNITED STATES OF AMERICA,

Petitioner,

vs.

ALBERTO ANTONIO LEON, et al.,

Respondents.

OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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TOPICAL INDEX

	Page
ADOPTIONS	2
1. Opinions Below	2
2. Jurisdiction	2
3. Appendix A	2
4. Appendix B	2
5. Appendix C	2
6. Appendix D	2
JOINDER	2
REASONS FOR NOT GRANTING THE PETITION.	2
I. THERE WAS NOT A VALID JUDICIAL FINDING OF GOOD FAITH IN THIS MATTER, AND THERE WAS NO HEARING OR EVIDENCE PRESENTED ON THAT ISSUE.	2
II. A GOOD FAITH EXCEPTION WOULD NOT AFFECT THIS CASE AS STATE LAW IS CONTROLLING.	9
III. THIS MATTER PRESENTS NO NEW AND NOVEL ISSUE TO THE COURT.	11
CONCLUSION	12

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Armando Sanchez and Patsy Stewart,
through their attorney Roger L. Cossack,
responds in opposition to the
Government's petition for a writ of
certiorari and urges this Court not to
grant the Government's request.

ADOPTIONS

Armando Sanchez and Patsy Stewart adopt in toto the Government's statements entitled "Opinions Below", "Jurisdiction", as well as Appendices A, B, C and D.

JOINDER

Respondents Alberto Antonio Leon, and Ricardo Albert Del Castillo join in this opposition.

REASONS FOR NOT GRANTING THE PETITION

I.

THERE WAS NOT A VALID JUDICIAL FINDING OF GOOD FAITH IN THIS MATTER, AND THERE WAS NO HEARING OR EVIDENCE PRESENTED ON THAT ISSUE.

The urging by the Government of a finding of good faith by the trial court

2.

is misleading and should not be considered as a finding by this Court. The statement made by the trial judge and cited by the Government (Government's Writ for Certiorari, P.14a) (hereinafter cited as G.P.) occurred during a hearing on a motion brought by the Government for reconsideration which was subsequently denied. During the hearing, the Assistant United States Attorney requested a finding of a good faith exception based on a record which did not show bad faith. (G.P. P.13a) The Court simply stated he believed the officer's testimony that he had gone to three (3) deputy district attorneys for assistance in preparing his affidavit for the search warrant before he went to the magistrate for the warrant. (G.P. P.14a)

In the instant matter, there are several areas wherein the good faith of the officer would have been examined if a hearing on the issue would have occurred. For example:

(1) The information which was used for probable cause was passed on to the police through a confidential informant. The defense attempted to question the officer about this informant, and was successfully prevented from doing so by the Government.

MR. COSSACK: You indicated that you were contacted by confidential informants in August of 1981.

Is that correct?

MR. ROMBACH: Yes.

MR. COSSACK: Were you contacted by the confidential

informant or were you contacted by someone else?

MR. ROMBACH: I was contacted by the informant.

MR. COSSACK: All right.

Was the informant in custody of a police officer at that time?

MR. ROMBACH: No.

MR. DAVIDSON: Objection, your Honor, as going outside of the scope of the affidavit. The affidavit speaks for itself.

And, failing any false statement of which there has been no allegation on this, testimony on probable cause would be irrelevant.

MR. COSSACK: Your Honor, if I might state this: the case of People v. Theodore, which is the

leading California case so far as known on search warrants, I would be allowed to go behind the face of the search warrant and the search warrant.

As the Court knows, we made a motion to find out who that informant was, and that motion was denied.

This is going to be my chance, at least, to talk to Officer Rombach about what he heard from that informant.

I think the California case allows me to do that, and I would ask the Court to allow me to ask these questions.

THE COURT: I don't believe whatever else the informant may have told him on the search

warrant is relevant, so the objection is sustained.

MR. COSSACK: Very well, your Honor.

BY MR. COSSACK: Officer Rombach, did the informant that you spoke to, was it August 18th that you spoke to the informant?

MR. ROMBACH: Yes.

MR. COSSACK: Was the informant -- did the informant receive any kind of reward or lesser sentence or help from the Police Department for giving the information?

MR. DAVIDSON: Objection, your Honor.

THE COURT: The objection is sustained. Same subject matter.

Reporter's Transcript of District Court Proceedings, Page 42, lines 1-25, Page 43, lines 1-16.

Therefore, the Court had no information in which to decide if it was reasonable for the police officer to believe the informant. Was he (she) a paid informant? Was he (she) an individual who was trading information in return for a lessening of a sentence? The Court and the defense were never told.

(2) If good faith is to be a defense to illegal police conduct, then a full and complete hearing must be held with

cross-examination allowed as to why the officer concluded the information was reliable. It would appear that there was an unsolvable tension between a claim of good faith exception by the police versus a claim of informant confidentiality. How can a magistrate or a court decide good faith without interviewing and seeing those individuals that the officer claims he reasonably believed?

II.

A GOOD FAITH EXCEPTION WOULD NOT AFFECT THIS CASE AS STATE LAW IS CONTROLLING.

This matter was investigated by the City of Burbank Police Department who also arrested the respondents. The search warrant was issued by a Los Angeles Municipal Court Judge acting as

a magistrate. The request for the search warrant, as well as the affidavit was prepared and signed by Officer Rombach, a Burbank Police Officer. The assistance he received was from three (3) Los Angeles County Deputy District Attorneys who were presumptively relying on California law. 1/

The briefs presented to the District Court contained citations to state as well as federal law along with a request and motion that state law be the basis for the court's decision. This issue was never resolved as the trial court found the warrant lacking in probable

1/ Why this matter was in the federal system at all was of great concern to the Ninth Circuit Panel who heard oral argument in this matter. The thrust of Justice Ferguson's initial questions to the Assistant United States Attorney was to request an answer to this question.

cause under federal standards and did not have to reach the federal - state issue.

Therefore, even if this Court resolved the good faith issue as the Government requests, it would have no effect in this matter as state law would be controlling.

III.

THIS MATTER PRESENTS NO NEW AND NOVEL ISSUE TO THE COURT.

This case does not present any new or novel issue with which this Court should concern itself. The Government admits that it

" . . . raises precisely the same issue that is now pending before the Court following the reargument in *Illinois v. Gates*,

NO. 81-430 (reargued March 1,
1983)." (G.P., P.10)

CONCLUSION

The Government's Petition for a Writ
of Certiorari should not be granted in
light of the above reasons stated.

Respectfully submitted.

ROGER L. COSSACK

Attorney for Respondents
Armando Sanchez and
Patsy Stewart

MAY 1983